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Department of the Treasury
Washington, DC 20224

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PLR-132686-13

Date:

December 17, 2013

Legend:

Fund =

Trust =

State =

Investment Manager =

Date =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Dear :

This ruling responds to a letter dated July 15, 2013, submitted on behalf of Fund. Fund requests consent to revoke a previous election made by Fund under section 4982(e)(4)(A) of the Internal Revenue Code (the "Code"), for Year 3 and subsequent years.

FACTS

Fund is a diversified series of Trust organized under the laws of State. Fund is registered with the Securities and Exchange Commission as a diversified open-ended investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended. Fund has made an election under section 851(a) to be treated as a regulated investment Company ("RIC") for federal income tax purposes under Subtitle A, Chapter 1, Subchapter M of the Code. Fund's overall method of accounting is an accrual method and its taxable year is the calendar year.

On Date, Fund was reorganized into a series of Trust pursuant to a reorganization within the meaning of section 368(a)(1)(F).

In Year 1, Fund elected under section 4982(e)(4)(A) to use the taxable year ending on December 31 in lieu of the one-year period ending on October 31 for the purposes of calculating the required distribution under sections 4982(b)(1) and (e) in order to avoid payment of an excise tax under section 4982(a).

The election under section 4982(e)(4)(A) was made in an attempt to reduce the complexity of tax accounting associated with calculating required distributions of ordinary income, capital gain net income, foreign currency gains and losses, and gains and losses pursuant to section 1296 under the excise tax and subchapter M provisions of the Code. However, Fund's experience has been that its section 4982(e)(4) election created additional administrative burdens, primarily due to time constraints in declaring required excise tax distributions. Furthermore, after the reorganization described above, Fund's investment manager was replaced with Investment Manager. Investment Manager advises multiple RICs, and except for Fund, none of the RICs have made an election under section 4982(e)(4), creating inconsistencies between the funds and in turn, additional administrative burdens. Lastly, the promulgation of regulations coordinating the excise tax and subchapter M provisions has greatly reduced the administrative burden of having a tax year different from the period used for determining Fund's required distribution under section 4982.

Accordingly, Fund seeks consent to revoke its election to use the taxable year for purposes of calculating Fund's required distribution for purposes of sections 4982(b) and 4982(e). Fund makes the following representations:

1. Fund's desire to revoke its election is due to administrative and non-tax related financial burdens caused by the election;
2. Fund is not seeking to revoke its election in order to preserve or secure a tax benefit;

3. Fund will neither benefit through hindsight, nor prejudice the interests of the government if permitted to revoke its election; and
4. Fund will not make a subsequent election under section 4982(e)(4)(A) for at least five calendar years following the year of the grant of revocation.

LAW AND ANALYSIS

Section 4982(a) imposes an excise tax on every RIC for each calendar year, equal to 4 percent of the excess, if any, of the “required distribution” over the “distributed amount” for the calendar year.

Section 4982(b)(1) defines the term “required distribution” to mean, with respect to any calendar year, the sum of (A) 98 percent of the RIC’s ordinary income for such calendar year (as defined in section 4982(e)(1)), plus (B) 98.2 percent of its capital gain net income for the one-year period ending on October 31 of such calendar year.

Section 4982(e)(4)(A) provides that if the taxable year of a RIC ends with the month of November or December, the RIC may elect to have its taxable year taken into account in lieu of the one-year period ending on October 31 of the calendar year for purposes of satisfying the required distribution defined in section 4982(b)(1)(B). Section 4982(e)(4)(B) provides that, once made, such election may be revoked only with the consent of the Secretary.

Section 4982(e)(5)(A) provides that any specified gain or specified loss which would be properly taken into account for the portion of the calendar year after October 31 shall be treated as arising on January 1 of the following calendar year. Section 4982(e)(5)(B) defines “specified gain” and “specified loss” as ordinary gain or loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). The terms include any foreign currency gain or loss attributable to a section 988 transaction and any amount includible in gross income under section 1296(a)(1), in the case of gain, or allowable as a deduction under section 1296(a)(2), in the case of loss. Section 4982(e)(5)(C) provides that if a RIC makes an election under section 4982(e)(4), the last day of the RIC’s taxable year will be substituted for October 31.

Section 4982(e)(6)(A) provides that, for the purposes of determining a RIC’s ordinary income, each specified mark-to-market provision shall be applied as if such RIC’s taxable year ended on October 31. Section 4982(e)(6)(A) also provides that in the case of a RIC making an election under section 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the RIC’s taxable year for October 31. Section 4982(e)(6)(B) defines “specified mark to market provision” as sections 1256 and 1296 and any other provision of the Code (or regulations thereunder) which treats property as disposed of on the last day of the taxable year.

Sections 4982(b)(1)(B) and 4982(e) provide that a RIC with a calendar year that does not have a section 4982(e)(4)(a) election in effect will compute capital gain net income for a one-year period ending on October 31. For a RIC that is revoking its election under section 4982(e)(4)(A), there is a possible inference that, for the first year following the revocation, such RIC's calculation of its capital gain net income will include the November-December period twice, once as part of the preceding calendar year and then again as part of the one-year period calculation for the year of change. To clarify that such a double inclusion is not required, Fund has requested that the calculation of its required distribution with respect to capital gain net income be determined on the basis of capital gain net income realized and recognized during the ten-month period from January 1 through October 31 of Year 3.

Fund also requested that the same shortened tax year be applied for the calculation of items of gain or loss described in sections 4982(e)(5) and (6). However, due to the differing statutory language of sections 4982(e)(5) and (6) from that of sections 4982(b)(1) and (e)(2), such an additional ruling is unnecessary. Unlike section 4982(e)(2)(A), sections 4982(e)(5) and (6) do not refer to a one-year period calculation.

Section 4982(e)(5)(A) provides that amounts that otherwise would be taken into account for the portion of a calendar year after October 31 are treated as arising on January 1 of the following year, effectively deferring inclusion of these amounts until the subsequent year. Because Fund had a section 4982(e)(4)(A) election in place for Year 2, section 4982(e)(5)(A) and (C) would be applied to treat specified gains or losses, which would be properly taken into account for the portion of the calendar year after December 31, Year 2, as arising on January 1 of Year 3. In other words, for the years that the section 4982(e)(4)(A) election was in place, there was no deferral of specified gains or losses. And the Fund's revocation of the section 4982(e)(4)(A) election will have no effect on the calculation of the Year 3 section 4982(e)(5)(A) specified gains and losses.

In addition, section 4982(e)(6)(A) states that each specified mark-to-market provision shall be applied as if the company's taxable year ended on October 31. It also provides that in the case of a RIC making an election under section 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the RIC's taxable year for October 31. Because Fund had a section 4982(e)(4)(A) election in place for Year 2, section 4982(e)(6) would be applied to treat the specified mark-to-market provisions as applying on December 31 of Year 2, and the revocation of the section 4982(e)(4)(A) election for Year 3 will not cause the Year 2 gains to be attributed to Year 3.

CONCLUSION

Based upon the information submitted and the representations made, we conclude that Fund's desire to revoke its election under section 4982(e)(4)(A) is because of administrative burdens and not because of any federal tax-related financial

burden caused by the election. Fund does not seek to revoke its election for the purpose of preserving or securing a federal tax benefit. Additionally, Fund will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke its election.

Accordingly, based on the representations made and pursuant to section 4982(e)(4)(B), the Secretary consents to the revocation of the election made by Fund under section 4982(e)(4)(A), effective for calendar Year 3 and subsequent years. In addition, in calculating the "required distribution" for calendar Year 3, for purposes of sections 4982(b)(1) and (e)(2), the capital gain net income will be determined on the basis of the capital gains and losses realized and recognized during the 10-month period from January 1, Year 3 through October 31, Year 3.

As a condition to the Secretary's consent to the revocation pursuant to section 4982(e)(4)(B), Fund may not make a subsequent election under section 4982(e)(4)(A) for a period of five (5) calendar years following the year to which the grant of revocation applies (i.e., Year 4 through Year 5, inclusive).

Except as specifically ruled upon above, no opinion is expressed or implied as to any other federal excise or income tax consequences.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives. It is important that a copy of this letter be attached to the federal income and excise tax returns filed by Fund for the year to which this ruling applies.

Sincerely,

K. Scott Brown
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions and Products)

cc: